

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-0765-WQ-E **TCEQ ID:** RN102334570 **CASE NO.:** 33491
RESPONDENT NAME: City of Kingsville

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Kingsville Landfill, 348 East County Road 2130, Kingsville, Kleberg County</p> <p>TYPE OF OPERATION: Municipal solid waste landfill</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 22, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lindsey Jones, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-4930; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable Sam Fugate, Mayor, City of Kingsville, P.O. Box 1458, Kingsville, Texas 78364 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 22, 2007</p> <p>Date of NOE Relating to this Case: April 20, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation. Two violations were documented.</p> <p>WATER</p> <p>1) Failed to certify the non-storm water discharge survey within 180 days of the submittal of the Notice of Intent ("NOI"). Specifically, the City submitted its NOI on September 14, 2006, but did not complete the survey until April 4, 2007. The survey certification was due by March 13, 2007 [30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(c), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR05L074, Part III.A.3.c.].</p> <p>2) Failed to perform the Annual Comprehensive Site Compliance Evaluation ("ACSCE") and submit the report in 2004, 2005, and 2006. Specifically, the ACSCE is required once per year and had not been completed between August 22, 2003 and the investigation date. The ACSCE for the 2006 year was completed on April 2, 2007 [30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(c), and TPDES General Permit No. TXR05L074, Part III.A.7.b.].</p>	<p>Total Assessed: \$3,440</p> <p>Total Deferred: \$688 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,752</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Certified its non-storm water discharge survey and analyzed the discharge for total suspended solids and iron by April 4, 2007;</p> <p>b. Performed the Annual Comprehensive Site Compliance Evaluation for 2006 by April 2, 2007; and</p> <p>c. Hired a consulting firm to assist in helping staff maintain compliance with recordkeeping requirements in order to prevent same or similar violations from occurring in the future.</p>

Additional ID No(s): TXR05L074



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 26, 2007

TCEQ
DATES

Assigned 23-Apr-2007

PCW 7-May-2007

Screening 14-May-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent City of Kingsville

Reg. Ent. Ref. No. RN102334570

Facility/Site Region 14-Corpus Christi

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 33491

Docket No. 2007-0765-WQ-E

Media Program(s) Water Quality

Multi-Media

No. of Violations 2

Order Type 1660

Enf. Coordinator Lindsey Jones

EC's Team Enforcement Team 5

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$4,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 11% Enhancement

Subtotals 2, 3, & 7 \$440

Notes The penalty was enhanced due to one prior similar NOV and three prior dissimilar NOV's.

Culpability No 0% Enhancement

Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 25% Reduction

Subtotal 5 \$1,000

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary
Ordinary X
N/A (mark with x)

Notes The Respondent came into compliance by April 4, 2007.

0% Enhancement*

Subtotal 6 \$0

Total EB Amounts \$99
Approx. Cost of Compliance \$1,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$3,440

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$3,440

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$3,440

DEFERRAL

20%

Reduction

Adjustment -\$688

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$2,752

Screening Date 14-May-2007

Docket No. 2007-0765-WQ-E

PCW

Respondent City of Kingsville

Policy Revision 2 (September 2002)

Case ID No. 33491

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN102334570

Media [Statute] Water Quality

Enf. Coordinator Lindsey Jones

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 11%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The penalty was enhanced due to one prior similar NOV and three prior dissimilar NOVs.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 11%

Screening Date 14-May-2007

Docket No. 2007-0765-WQ-E

PCW

Respondent City of Kingsville

Policy Revision 2 (September 2002)

Case ID No. 33491

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN102334570

Media [Statute] Water Quality

Enf. Coordinator Lindsey Jones

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(c), and TPDES General Permit No. TXR05L074, Part III.A.3.c.

Violation Description

Failed to certify the non-storm water discharge survey within 180 days of the submittal of the Notice of Intent ("NOI"). Specifically, the Respondent submitted an NOI on September 14, 2006, but did not complete the survey until April 4, 2007. The survey certification was due by March 13, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

22 Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$860

This violation Final Assessed Penalty (adjusted for limits) \$860

Economic Benefit Worksheet

Respondent City of Kingsville
Case ID No. 33491
Reg. Ent. Reference No. RN102334570
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$250	13-Mar-2007	4-Apr-2007	0.1	\$1	n/a	\$1
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly prepare and submit the non-storm water discharge survey. Date required is the date the report was due and final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

TOTAL

\$1

Screening Date 14-May-2007

Docket No. 2007-0765-WQ-E

PCW

Respondent City of Kingsville

Policy Revision 2 (September 2002)

Case ID No. 33491

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN102334570

Media [Statute] Water Quality

Enf. Coordinator Lindsey Jones

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(c), and TPDES General Permit No. TXR05L074, Part III.A.7.b.

Violation Description

Failed to perform the Annual Comprehensive Site Compliance Evaluation ("ACSCE") and submit the report in 2004, 2005, and 2006. Specifically, the ACSCE is required once per year and had not been completed between August 22, 2003 and the investigation date. The ACSCE for the 2006 year was completed on April 2, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

995 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	x
	single event	

Violation Base Penalty \$3,000

Three annual events are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$98

Violation Final Penalty Total \$2,580

This violation Final Assessed Penalty (adjusted for limits) \$2,580

Economic Benefit Worksheet

Respondent City of Kingsville
Case ID No. 33491
Reg. Ent. Reference No. RN102334570
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$750	22-Aug-2004	2-Apr-2007	2.6	\$98	n/a	\$98
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly prepare and submit the annual comprehensive site compliance evaluation and report. Date required is the date the first report was due and final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$750

TOTAL

\$98

Compliance History

Customer/Respondent/Owner-Operator: CN600674246 City of Kingsville Classification: AVERAGE Rating: 3.32
 Regulated Entity: RN102334570 CITY OF KINGSVILLE LANDFILL Classification: AVERAGE Site Rating: 1.86
 ID Number(s): MUNICIPAL SOLID WASTE DISPOSAL PERMIT 235B
 AIR NEW SOURCE PERMITS ACCOUNT NUMBER KJ0007F
 STORMWATER PERMIT TXR05L074
 Location: 348 E COUNTY ROAD 2130, KINGSVILLE, TX, 78363 Rating Date: September 01 06
 Repeat Violator: NO
 TCEQ Region: REGION 14 - CORPUS CHRISTI
 Date Compliance History Prepared: June 11, 2007
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: May 14, 2002 to May 14, 2007
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Lindsey Jones Phone: 512-239-4930

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 01/13/2003 (13682)
 2 04/10/2003 (27616)
 3 08/20/2003 (149376)
 4 08/25/2003 (150530)
 5 02/03/2004 (260233)
 6 01/10/2006 (437154)
 7 04/20/2007 (554331)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 11/07/2002 (13682)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter F 330.133(a)
 30 TAC Chapter 330, SubChapter F 330.133(d)

Description: The regulated entity failed to apply adequate daily cover/alternative daily cover.

Date: 02/20/2003 (27616)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter E 330.56(n)(11)[G]

Description: The COK failed to conduct quarterly landfill gas monitoring for the third and fourth quarters in 2002.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 330, SubChapter F 330.133(a)
 30 TAC Chapter 330, SubChapter F 330.133(d)

Description: Failure to provide appropriate daily cover when closed for a period greater than 24 hours.

Date: 08/26/2003 (150530)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A.281.25(a)(4)

Rqmt Prov: PERMIT MSGP - TXRO5L074

Description: Failure to conduct a comprehensive site compliance evaluation for 2002.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter.281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT MSGP - TXRO5L074

Description: Failure to conduct hazardous metal monitoring in the year 2002 or qualify for a waiver from hazardous metal monitoring requirements.

Date 02/13/2007 (534427)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

30 TAC Chapter 305, SubChapter F 305.125(5)

Rqmt Prov: PERMIT MSGP, Part III, Section E.2(c)(1)

Description: Failure to at all times ensure that the facility and all of its systems of collection, treatment and disposal are properly operated and maintained in a manner that minimizes the discharge of excessive pollutants.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter D 330.139(2)

Rqmt Prov: PERMIT SOP Sec 1.12 Control of Windblown Materi

Description: Failure to collect litter within, and around the landfill site weekly or more often as necessary to minimize unhealthy, unsafe, or unsightly conditolons. During the investigation, windblown litter was observed outside of the perimeter fence on FM 2130.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter D 330.165(a)

Rqmt Prov: PERMIT SOP Section 1.25.1 Daily Cover

Description: Failure to ensure that cover is placed daily on the top and side of the working area. During the investigation the active face lacked the required six inches of well compacted daily cover.
Failure to ensure that cover is placed daily on the top and side of the working area. During the investigation the active face l

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter D 330.165(c)

Rqmt Prov: PERMIT SOP Section 1.25.2, Intermediate Cover

Description: Failure to maintain at least twelve inches of suitable earthen material, not previously mixed with garbage, rubbish, or other solid waste. During the investigation the intermediate area exhibited severe erosion.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF KINGSVILLE
RN102334570**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0765-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Kingsville ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a municipal solid waste landfill facility at 348 East County Road 2130 in Kingsville, Kleberg County, Texas (the "Facility").
2. The City has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about April 25, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Four Hundred Forty Dollars (\$3,440) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Two Thousand Seven Hundred Fifty-Two Dollars (\$2,752) of

- the administrative penalty and Six Hundred Eighty-Eight Dollars (\$688) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
 8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
 9. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:
 - a. Certified its non-storm water discharge survey and analyzed the discharge for total suspended solids and iron by April 4, 2007;
 - b. Performed the Annual Comprehensive Site Compliance Evaluation for 2006 by April 2, 2007; and
 - c. Hired a consulting firm to assist in helping staff maintain compliance with recordkeeping requirements in order to prevent same or similar violations from occurring in the future.
 10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
 11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
 12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have:

1. Failed to certify the non-storm water discharge survey within 180 days of the submittal of the Notice of Intent ("NOI"), in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(c), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR05L074, Part III.A.3.c., as documented during an investigation conducted on March 22, 2007. Specifically, the City submitted its NOI on September 14, 2006, but did not complete the survey until April 4, 2007. The survey certification was due by March 13, 2007.

2. Failed to perform the Annual Comprehensive Site Compliance Evaluation ("ACSCE") and submit the report in 2004, 2005, and 2006, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(c), and TPDES General Permit No. TXR05L074, Part III.A.7.b., as documented during an investigation conducted on March 22, 2007. Specifically, the ACSCE is required once per year and had not been completed between August 22, 2003 and the investigation date. The ACSCE for the 2006 year was completed on April 2, 2007.

III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Kingsville, Docket No. 2007-0765-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

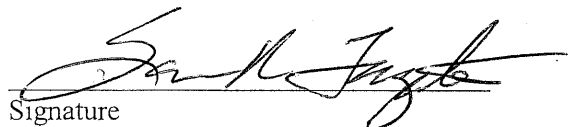
10/27/2007
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

08/03/07
Date

Sam R. Fugate

Name (Printed or typed)
Authorized Representative of
City of Kingsville

Mayor

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

